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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/505,441	11/30/2004	Steven Melvyn Howdle	P70050USO	7199
136 7590 08/07/2007 JACOBSON HOLMAN PLLC 400 SEVENTH STREET N.W. SUITE 600 WASHINGTON, DC 20004			EXAMINER NAFF, DAVID M	
			ART UNIT 1657	PAPER NUMBER
			MAIL DATE 08/07/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/505,441	HOWDLE ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	David M. Naff	1657	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 09 May 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 15-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>3/25/05</u> .   | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION**

Claims in the application are 1-20.

A response of 5/9/07 to a restriction requirement of 4/9/07 elected Group I claims 1-14 with traverse.

5 Applicant's election of Group I claims 1-14 in the reply filed on 5/9/07 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

10 Claims 15-20 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made without traverse in the reply filed on 5/9/07.

Claims examined on the merits are 1-14.

15 ***Specification***

The disclosure is objected to because of the following informalities: the specification fails to contain headings designating different sections.

The following guidelines illustrate the preferred layout and  
20 content for patent applications. These guidelines are suggested for the applicant's use.

**Arrangement of the Specification**

25 The following order or arrangement is preferred in framing the specification and, except for the reference to the drawings, each of the lettered items should appear in upper case, without underling or bold type, as section headings. If no text follows the section

Art Unit: 1657

heading, the phrase "Not Applicable" should follow the section heading:

- (a) Title of the Invention.
- (b) Cross-Reference to Related Applications.
- (c) Statement Regarding Federally Sponsored Research or Development.
- (d) Reference to a "Sequence Listing," a table, or a computer program listing appendix submitted on compact disc (see 37 CFR 1.52(e)(5)).
- (e) Background of the Invention.
  - 1. Field of the Invention.
  - 2. Description of the Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (f) Brief Summary of the Invention.
- (g) Brief Description of the Several Views of the Drawing(s).
- (h) Detailed Description of the Invention.
- (i) Claim or Claims (commencing on a separate sheet).
- (j) Abstract of the Disclosure (commencing on a separate sheet).
- (k) Drawings.
- (l) Sequence Listing, if on paper (see 37 CFR 1.821-1.825).

The following suggestions are made.

Page 1,

above line 2 insert --

BACKGROUND OF THE INVENTION

- 1. Field of the Invention

--.

between lines 12 and 13 insert --

- 2. Description of the Related Art

--.

Page 4,

between lines 11 and 13 insert --

SUMMARY OF THE INVENTION

--.

Page 5,

Art Unit: 1657

between lines 25 and 26 insert --

BRIEF DESCRIPTION OF THE DRAWINGS --

(provide a brief description of each drawing) followed  
by the heading --

DETAILED DESCRIPTION OF THE INVENTION

--.

Appropriate correction is required.

*Claim Rejections - 35 USC § 112*

The following is a quotation of the second paragraph of 35 U.S.C.

10 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

15 Claims 1-14 are rejected under 35 U.S.C. 112, second paragraph,  
as being indefinite for failing to particularly point out and  
distinctly claim the subject matter which applicant regards as the  
invention.

The claim are confusing and unclear by failing to set forth  
20 clear, distinct and positive process steps such that each step is  
clear how it relates to other steps in producing the composite. Claim  
1 is unclear where the preamble ends and steps of the process begin.  
The claims encompass several different processes having substantially  
different conditions, which makes unclear the invention claimed. The  
25 functioning matter defined in the preamble should be defined where the  
matter is required in the process steps. Claim 1 appears to be  
claiming two alternative processes by reciting "or if at a

Art Unit: 1657

temperature" (bridging lines 18 and 19). Each process should be in a separate claim, or if the temperature is a further limitation of the process, the modification required by the temperature should be in a dependent claim.

5 In line 2 of claim 1 and where recited in other claims

"functioning matter" is uncertain as to meaning and scope.

Functioning of matter is relative and subjective.

The dependent claims are unclear how they further limit claim 1 by not having clear antecedent basis in claim 1 for limitations of the  
10 dependent claims.

In line 5 of claim 8 and where recited in any other claims "such as for example" makes unclear whether the limitation is to be patentable limiting.

In line 3 of claim 14 and where recited in any other claims sett  
15 forth materials as "including" makes unclear as to whether the materials are to be part of the process.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section  
20 made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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Art Unit: 1657

Claims 1-14 are rejected under 35 U.S.C. 102(b) as being anticipated by De Ponti et al (WO 91/09079) or Devine et al (WO 02/00275) or Hile et al.

5 The claims are drawn to a process for preparation of a polymer composite loaded with functioning matter directly in one step involving contacting a polymer and functioning matter with a plasticizing fluid that can be in a supercritical state.

10 De Ponti et al disclose preparing a porous matrix by contacting a polymer with a supercritical fluid and reducing pressure. The porous matrix produced can be used for controlled-release of drugs.

The process of the present claims can be the same as the process disclosed by De Ponti et al.

Devine et al disclose making a porous polymer using a supercritical fluid. For example, see page 20.

15 The presently claimed process can be the same as the process of Devine et al.

Hile et al disclose producing microporous foams containing encapsulated proteins using supercritical carbon dioxide.

20 The process of the present claims can be the same as the process disclosed by Hile et al.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

25 A person shall be entitled to a patent unless -

Art Unit: 1657

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

5        Claims 1-14 are rejected under 35 U.S.C. 102(a) as being anticipated by Howdle et al (6,670,407).

The claimed invention is described above.

Howdle et al disclose preparing biofunctional polymers using a supercritical fluid.

10        The presently claimed process can be the same as the process disclosed by Howdle et al.

#### ***Conclusion***

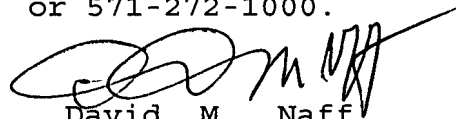
Any inquiry concerning this communication or  
15 earlier communications from the examiner should be directed to David M. Naff whose telephone number is 571-272-0920. The examiner can normally be reached on Monday-Friday 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful,  
the examiner's supervisor, Jon Weber can be reached on 571-272-0925.  
20 The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



Art Unit: 1657

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
David M. Naff  
Primary Examiner  
Art Unit 1657

DMN

15 8/6/07